

LITC Conference

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"APPEALS"

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My approach

- The basics, PLUS some new stuff
- ...FAST !

Distinction

IRS Appeals Division

vs.

Judicial appeals

Big Issue

- “INDEPENDENCE” OF APPEALS ?
 - ABA Section of Taxation Survey Report (8/11/07)

MISSION

- "...to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service..." IRM 8.1.1.2

Appeals Jurisdiction

- **LIABILITY** cases – disputing Examination adjustments
 - Penalty claims
 - Innocent spouse
 - Interest abatements
- **COLLECTION** actions
 - Since 1998: Collection Due Process explosion

Liability cases – 2 ways to get to Appeals

■ **Non-Docketed**

- Exam report – 30 day letter – protest -

■ **Docketed**

- post 90-day letter (SND)



Appeals Deals

- criteria: “litigation hazards”
- No nuisance value settlements
- Other constraints

Strategy

- **How much detail in your protest?**
- **By-pass 30-day letter, and go docketed route?**
 - **By-pass Appeals entirely?**
- **What kind of offer to make?**
- **What if no agreement?**

Appeals and Collection

Collection Appeals Program (CAP)

- Available to dispute a wide variety of collection actions
- Hardship not considered! Just “appropriateness” of action
- Must speak to Collection manager first!
- Make request on Form 9423 (oral for ACS cases)
- “by policy”, freeze on collection activities

Excluded from CAP

- Rejected offers in compromise
- Trust fund recovery penalties
- Audit reconsiderations
- Penalty appeals

...all have own Appeals procedures (see IRM 8.24.1.2.2)

Collection Due Process

- Since 1998
- Triggered by 4 kinds of IRS Notices, most importantly:
 - Final Notice of Intent to Levy (CP-90, letters 1058/11)
 - Notice of Filing of Federal Tax Lien (letter 3172)
- Statutory freeze on collection if timely filed request for CDP (Form 12153 – recent revision)
- Suspends SOL
- Tax Court review, for “abuse of discretion”
- If untimely... “Equivalency” hearing (but must make specific request)

What are your arguments?

- Dispute liability (if no statutory notice of deficiency received, or other opportunity)
- Innocent spouse relief
- Collection alternatives
 - OIC
 - Installment agreement
 - Partial?
 - CNC

Miscellaneous Issues/comments

- **The good old days...and NOW**
 - Centralization (see TIGTA report 2007-10-071; 5/10/07)
- ***Ex parte* communications** – prohibited in 1998, to the extent the communications “appear to compromise the independence of Appeals”; i.e. – for substantive matters only
- **Statistics-success?**